



STATE OF NEW JERSEY

Board of Public Utilities

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Newark, NJ 07102

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**OFFICE OF CABLE
TELEVISION**

IN THE MATTER OF THE PETITION OF RCN)
TELECOM SERVICES, INC. AND PATRIOT)
MEDIA & COMMUNICATIONS CNJ, LLC)
FOR APPROVAL OF THE TRANSFER OF)
CERTIFICATES OF APPROVAL, FOR THE)
TRANSFER OF PARTNERSHIP INTERESTS AND)
FOR APPROVAL OF THE SALE OF ASSETS)

ORDER OF APPROVAL

DOCKET NO. CM02090653

(SEE ATTACHED SERVICE LIST)

BY THE BOARD:¹

On September 12, 2002, RCN Telecom Services, Inc. (RCN), and Patriot Media & Communications CNJ, Inc. (Patriot) (jointly referred to as the Petitioners), petitioned the Board of Public Utilities (Board), pursuant to N.J.S.A. 48:5A-40 and 19, and N.J.A.C. 14:17-6.10 and 6.8, for approval of the transfer of Certificates of Approval (COA), the transfer of partnership interests and for approval of the sale of assets (Transaction), from RCN to Patriot.

RCN, a Pennsylvania corporation, owns and operates a cable television system serving twenty-nine (29) municipalities in Hunterdon, Somerset, Morris and Mercer Counties, New Jersey. RCN also owns an 80.355% interest in Home Link Communications of Princeton, L.P. (Home Link), a New Jersey limited partnership, which holds the municipal consents and COAs for Princeton Borough and Princeton Township, New Jersey (all aforementioned cable television systems are collectively referred to as the CATV System). The remaining 19.645% interest in Home Link is owned by the Kilgore Group.

Patriot is a wholly owned subsidiary of Patriot Media Holdings, LLC, a Delaware Limited Liability Company that is owned by Simmons/Patriot Holdings, LLC and Spectrum/Patriot Media, Inc. Simmons/Patriot Media & Communications LLC (SPMC), also a Delaware LLC not affiliated with Patriot, will manage the day-to-day operations of Patriot pursuant to a Management Agreement.

¹ Commissioner Carol J. Murphy did not participate or vote in this matter.

Pursuant to a certain Asset Purchase Agreement dated August 27, 2002 (Purchase Agreement), between RCN, RCN Corporation and Patriot, RCN will transfer to Patriot the COAs and assets of the CATV System, including its Home Link partnership interests. The Purchase Agreement also provides that Patriot will assume certain obligations of RCN in conjunction with the operation of the CATV System. In particular, Patriot will assume the schedule for the completion of the rebuild of the CATV System, as has been presented to the Board and various communities and in conjunction with the Board's review of the CATV System's rebuild as part of Docket No. CX01070460.

The Purchase Agreement further provides that RCN and Patriot will use their best commercial efforts to cause RCN's interests in the Indefeasible Right to Use Agreement and the Guarantee by and between RCN and Metropolitan Fiber Systems of New Jersey, Inc. (MFS-NJ) each dated March 26, 1999 (collectively the IRU Agreement) to be assigned to Patriot and the Purchase Agreement contemplates such a transfer of rights to Patriot. In furtherance of that intention, RCN, by letter dated December 4, 2002, sought MFS-NJ's consent to the assignment of its right, title and interest in the IRU Agreement to Patriot. Said consent was granted by a senior manager of MFS-NJ by statement and signature dated December 12, 2002 on the December 4, 2002 letter provided by RCN. Having gained MFS-NJ's consent, RCN and Patriot seek Board approval of the assignment of RCN's right, title and interest in the IRU Agreement to Patriot.

On October 17, 2002, the Petitioners also filed with the Board a FCC Form 394 – Application for Franchising Authority Consent to Assignment or Transfer of Control of Cable Television Franchise, setting forth pertinent information concerning the Transaction.

After the Transaction's completion, the acquired CATV System will do business as Patriot Media & Communications CNJ, LLC. Patriot will hold all authorizations and licenses formerly held by RCN. Mr. Steven Simmons, Chairman and Chief Executive Officer of Patriot, is also Chairman of SPMC which will manage the day-to-day business and affairs of Patriot. Mr. Simmons will operate from Patriot's offices in Greenwich, Connecticut but will spend much of his time in the CATV service area. Currently, key Patriot employees, including their general manager are working from RCN's Carnegie Center offices in Princeton. After the closing, most of Patriot's employees will move temporarily to a Hillsborough location until the middle of the year when they will move to their new headquarters in Franklin Township.

Patriot asserts that it is committed to completing the rebuild, providing digital programming and two way high-speed data service, and to increasing the selections available to the public. In addition, a new customer call center and dispatch center will be established in the service area.

Following submission of the petition, the Petitioners provided written responses to written requests for additional information regarding the impact of the transfer of assets and Certificates of Approval on RCN's New Jersey cable television customers. In addition, the Petitioners provided information supporting the ability of Patriot to continue to provide safe, adequate and proper service subsequent to the transfer.

On February 3, 2003, a supplemental comment was received on this matter from the Office of the Ratepayer Advocate. The Advocate argues that a condition of the transfer should include a restriction forbidding Patriot from making any changes or modifications to the FCC Forms 1240 and 1205 submitted by RCN on January 24, 2003, and in which RCN seeks approval of rates for the upcoming year. BPU Docket Nos. CR03010045 and CR03010046. The Advocate argues that this restriction will protect ratepayers. Under 47 C.F.R. § 76.933(g)(1), however, a cable television operator may file an amendment to its Form 1240 prior to the end of the 90-day review period if a material change in the operator's circumstances occurs during that review period and the change

affects the operator's rate change filing. As such, the suggested condition may not be imposed. Nevertheless, all parties will have the opportunity to be heard in the course of any rate case, including on any changes or modifications that Patriot may make to the submissions filed by RCN.

After a review of this matter, the Board HEREBY FINDS the Transaction is to be made in accordance with law, is in the public interest and there will be no adverse impact on the financial integrity of the affected cable companies. Moreover, the Board has continuing authority to regulate the CATV System's basic cable service and equipment and installation rates and enforce the CATV system's franchise obligations. In view of the foregoing, the Board HEREBY ORDERS that Petitioners be and are HEREBY AUTHORIZED to transfer RCN's Certificates of Approvals, partnership interests and assets, including its right, title and interest in the IRU Agreement to Patriot and to execute all documents related thereto. This Order is subject to the following:

- 1) This Order shall not affect or in any way limit the exercise of the authority of the Board or the Office of Cable Television or the State of New Jersey in any future petition or in any proceeding regarding rates, cost of service, franchises, services, financing, accounting, capitalization, depreciation, maintenance or any other matters affecting the Petitioners.
- 2) This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of tangible or intangible assets now owned or hereinafter to be owned by Petitioners.
- 3) This Order shall not be construed as superseding pending rate proceedings involving any of the petitioners.
- 4) The Petitioners shall notify the Board, in writing, within five (5) days of the date on which each of the transactions is consummated.
- 5) Consummation of the above referenced transactions must take place not later than 90 days from the date of this Order, unless otherwise extended by the Board.
- 6) Petitioners shall file a Certification with the Board within 30 days of the closing attesting to the lack of material deviation in the executed closing documents or final terms from those terms and conditions described herein and /or submitted to the Board with the Petition. Any such material deviation in the executed closing documents shall render this Order voidable by the Board.
- 7) Petitioners shall file journal entries with the Board to record the transactions approved herein within 45 days of final closing.
- 8) Patriot shall be liable for the State assessment, pursuant to N.J.S.A. 48:5A-32, and municipal franchise fees, pursuant to N.J.S.A. 48:5A-30, due and owing as of the statutory payment dates for the preceding calendar year relating to the CATV System being acquired pursuant to the Purchase Agreement approved herein.
- 9) RCN shall provide, within 45 days of the date of closing, revised Office of Cable Television Forms CATV-1 and CATV-2 which shall reflect gross

revenue, as defined by the applicable statutes, for the periods January 1, 2003 through closing, for the CATV System transferred. In the event RCN fails to provide these revised forms, Patriot shall assume the obligation of this Board Order condition and file the aforementioned revised forms 30 days thereafter.

- 10) All franchise obligations, commitments and agreements shall continue in force in all respects under Patriot ownership.
- 11) Patriot shall file within 45 days of the closing of the Transaction a revised tariff for cable television service reflecting the new ownership and listing all charges as required by the Board, the Office of Cable Television or the Federal Communications Commission.
- 12) All of the obligations imposed upon RCN and/or Home Link under the Certificates of Approval issued by the Board for the municipalities served by RCN and/or Home Link, or by any and all Offers of Settlement, Consent Agreements, or other commitments made by RCN and Home Link relating to the operation of its Central New Jersey cable systems, including, but not limited to all Orders issued by the Board in Docket No. CX01070460 and/or relating to any and all of the terms, conditions and requirements of any Certificate of Approval, Offers of Settlement, Consent Agreements, rates or other matters within the jurisdiction of the Board shall be assumed, in full, by Patriot, provided however, that all of the foregoing, to the extent effective on or before the closing date, will all be RCN's as well.
- 13) All representations and Commitments made by RCN and Home Link to the municipalities serviced by the CATV System and the Board are fully enforceable against Patriot as if set forth at length herein and shall also be assumed by Patriot.
- 14) Approval of the transfer of assets and Certificates of Approval herein shall not constitute automatic approval of any business contract referenced in the Agreement or supporting documents, if Board approval pursuant to N.J.S.A. 48:5A-1 et seq. would otherwise be required.
- 15) Patriot shall provide the Adjustment Certificate as per § 2.3(c) of the Purchase Agreement not later than thirty (30) days from its execution, but not later than ninety (90) days following the Closing Date.
- 16) Patriot shall provide the Board executed copies of the Form of Regulatory Opinion (Exhibit G) and the Form of New Jersey Regulatory Opinion (Exhibit K) of the Purchase Agreement, not later than thirty (30) days after the Closing Date.
- 17) Patriot shall provide the Board lien releases from all RCN creditors for all assets transferred and stock pledged by RCN not later than thirty (30) days after the Closing Date.

- 18) Patriot shall file its Petition requesting approval of the transfer of the Kilgore Group's partnership interest in Home Link to Patriot not later than thirty (30) days from the date of this Order.
- 19) Patriot shall file with the Board the Purchase Price Allocation, as required by Section 2.5 of the Purchase Agreement, not later than thirty (30) days after the Closing Date.
- 20) Patriot shall use the remaining funds from the Credit Facility, more fully described under the Order issued by the Board in Docket No. CF02100730, for the completion of its rebuild/upgrade commitments and non-rebuild capital expenditures.
- 21) Within ninety (90) days from the date of closing of the proposed transaction, Petitioners shall certify, for each system under their control, as well as each system to be acquired/transferred as part of this Docket the following items:
 - a. That all New Jersey cable television systems under their respective ownership and/or control, are in full compliance with Article 820 of the National Electrical Code as previously certified.
 - b. That all Board Ordered requirements or conditions arising out of any and all Offers of Settlement and Certificates of Approval have been or are being satisfied within the time frame set forth therein.
 - c. That sufficient funds will be available to fund all outstanding network extensions, rebuilds, upgrades, or other construction commitments arising from a system's Primary Service Area (PSA), Certificate of Approval, Municipal Consent, Letters of Intent or other Orders or agreements, including but not limited to the Board Order in Docket No. CX01070460 and documentation provided subsequent thereto.
 - d. That billing records are available for all customers in New Jersey cable television systems under their respective ownership and/or control and to provide the Board and its OCTV with copies of such records for three (3) years in accordance with N.J.A.C. 14:18-3.7.

Should Petitioners be unable to complete their review of their respective systems within 90 days of closing, each petitioner shall file a certified report with the OCTV prior to the expiration of the 90 day period setting forth its progress on the requirements set forth above in paragraphs a through d. Petitioners will at that time have the option of requesting an extension of time of up to 90 days to finalize the review of their systems and certify to same with regard to the provisions of paragraphs a through d set forth above.

- 22) Patriot Media and Communications CNJ, LLC shall diligently pursue timely completion by December 2004 of all plant construction, including rebuilds and upgrades to the areas as required pursuant to the Board's

Order Approving the Consent Agreement in Docket No. CX01070460,
and shall continue to provide the OCTV with monthly construction status
reports for each municipality.

All parties to the Transactions shall comply with the New Jersey Cable Television Act and
applicable sections of the New Jersey Administrative Code.

DATED: February 6, 2003

BOARD OF PUBLIC UTILITIES
BY:

(signed)

JEANNE M. FOX
PRESIDENT

(signed)

FREDERICK F. BUTLER
COMMISSIONER

(signed)

CONNIE O. HUGHES
COMMISSIONER

(signed)

JACK ALTER
COMMISSIONER

ATTEST:

(signed)

KRISTI IZZO
SECRETARY

**IN THE MATTER OF
THE PETITION OF RCN TELECOM SERVICES, INC. AND PATRIOT MEDIA AND
COMMUNICATION CNJ, LLC FOR APPROVAL OF THE TRANSFER OF
CERTIFICATES OF APPROVAL, FOR TRANSFER OF PARTNERSHIP INTERESTS
AND FOR APPROVAL OF THE SALE OF ASSETS
DOCKET NO. CM02090653**

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